Office-Supreme Court, U.S.
FILED
MAR 21 1964
JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 938

MRS. WALTER LEWIS, CIRCUIT CLERK AND REGISTRAR OF ELECTIONS OF BOLIVAR COUNTY, MISSISSIPPI — Petitioner

vs.

ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES — Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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INDEX

	Page
PETITION FOR WRIT OF CERTIORARI (Appendix separately printed and presented herewith) pages 1-52, including index.	
INTRODUCTORY STATEMENT	2
OPINIONS BELOW	5
JURISDICTION	7
QUESTIONS PRESENTED	7-9
CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED	10
STATEMENT OF THE CASE	11
REASONS FOR THE ISSUANCE OF THE WRIT — ARGUMENT	22
CONCLUSION	51
CERTIFICATE	53

TABLE OF CASES

Cafeteria Workers vs. McElroy, 367 U. S. 886, 6 L. Ed. 2d 1230 (1961)	35
Crowell vs. Benson, 285 U. S. 22, 76 L. Ed. 598	41
Crum vs. The Attorney Gen. of The United States, 187 F. Supp. 848	30, 33
Crum Dinkins, et al. vs. Rogers, Atty Gen., 285 F. 2d 430	30, 33
Dictagraph Products vs. Sonotone Corp., 231 F. 2d 867	37
Dixon vs. Ala. State Board of Education, 5 Cir., 294 F. 2d 150, Cert. Den. 368 U. S. 930 (1961)	34
Federal Radio Commission vs. General Electric Co., 281 U. S. 464; 74 L. Ed. 969	41
Greene vs. McElroy, 360 U. S. 374 (1960)	34
Hannah vs. Larche, 363 U. S. 420, 494, 4 L. Ed. (2) 1307, 1357	51

Page

Holliday vs. Great Atlantic & Pacific Tea Co., 256 F. 2d 297 37

Hudson vs. Newell, 172 F. 2d 848 37

Joint Anti-Fascist Refugee Committee vs. McGrath, 341 U. S. 123, 163, 95 L. Ed. 817 34, 42

Kennedy vs. Lewis (And Reverse Title) 325 F. 2d 210 1, 6, 7, 8, 25, 28, 30, 31

Kennedy vs. Lewis (Dist. Ct.) 6

Kennedy vs. Lynd, 306 F. 2d 222 3, 7, 8, 12, 13, 19, 20, 21, 22

Kennedy vs. Lynd (Dist. Ct.) 6, 7

Kennedy vs. Owen, 321 F. 2d 116 (5 Cir. 7/3/63) 7, 12, 22, 25, 27, 28, 31, 36, 52

Kennedy vs. Owen, (Dist. Ct.) 7

Kent vs. Dulles, 357 U. S. 116, 2 L. Ed. 1204, 1210 35

McFarland vs. American Sugar Ref. Co., 241 U. S. 79, 86, 60 L. Ed. 899, 904 51

Muskrat vs. United States, 219 U. S. 346, 356, 55 L. Ed. 246, 250 39

O'Malley vs. Cover, 221 F. 2d 156 37

Porter vs. Investors Syndicate, 286 U. S. 461, 76 L. Ed. 1226 41

Shelley vs. Kraemer, 334 U. S. 1, 92 L. Ed. 1161 36

Smith vs. Whitmore, 276 F. 2d 741, 745 32

Thomas vs. Thomas, 165 F. 2d 322 37

Tutun vs. United States, 270 U. S. 568, 570, 70 L. Ed. 738, 741 38, 40, 41

U. S. vs. Atkins, 323 F. 2d 733 35

U. S. vs. Sinor, 238 F. 2d 271 37

U. S. vs. Wood, 295 F. 2d 772, 783, 5 Cir. (1961) 32

TABLE OF AUTHORITIES

	Page
PROVISIONS OF U. S. CONSTITUTION AND AMENDMENTS THERETO CITED:	
Article III, Secs. 1 & 2	9, 10, 12, 13, 37, 38, 41
Amendment V; Due Process of Law Provision	11
Amendment VI	11
U. S. STATUTES CITED:	
Title 28, USC, Sec. 1254(1)	11
Title 42, USC, Sec. 1974	3, 11, 14, 23, 37
Title 42, USC, Sec. 1974a	3, 11, 14, 23
Title 42, USC, Sec. 1974b	3, 11, 12, 14, 23, 24, 25
Title 42, USC, Sec. 1974c	3, 11, 14, 15, 23
Title 42, USC, Sec. 1974d	2, 3, 5, 8, 11, 14, 15, 19, 23, 27, 29, 30, 31, 32, 36
Title 42, USC, Sec. 1974e	11, 14, 15, 23
Title 28, USC, Sec. 1291	11
Title 28, USC, Sec. 2101	11
Title 18, USC, Sec. 242	11
MISSISSIPPI CODE OF 1942, ANNOTATED, RECOMPILED:	
Section 2106	11
Section 2111	11
Section 3275	11
FEDERAL RULES OF CIVIL PROCEDURE:	
Rule 1	11, 25
Rule 8(b)	10
Rule 81(a)(3)	11, 25
OTHER AUTHORITIES CITED:	
Report of House Judiciary Committee, 86th Cong., 1st Sess., No. 956, dated 9-20-59—to accompany H. R. 8601 of that Congress, p. 7, par. 1 (Sec. 306 of that Bill later became Sec. 305, and is Sec. 1974d, Title 42, USCA	28

Page

1959 Hearings on Civil Rights Before House Judiciary Committee, Sub-Committee No. 5, 86th Cong., 1st Sess., 3-11-59; testimony of then U. S. Atty. Gen. Rogers stating meaning of what became and is Sec. 1974d, supra 27

Senate Judiciary Sub-Committee on Constitutional Rights Hearing on Civil Rights, 1959, 86th Cong., 1st Sess., stating meaning of what is said Sec. 1974, Part 4 . . . . 27, 28

Quote from Printed Record Filed in Fifth Circuit in Cause NO. 18562 there, which was an appeal by Defendants from decision of District Court, 187 F. Supp. 848 30

Hearings Before Full Senate Judiciary Committee, 86th Cong., 2nd Sess., on Civil Rights Act of 1960, H. R. 8601 32

Statement by Congressman Cellar, Chairman of House Judiciary Committee, Congressional Record (Bound Volume) 1960, Vol. 106, 86th Cong., 2nd Sess., Daily Edition, Vol. 106, p. 4, House Proceedings on 3-10-60 . . . . 32, 33

Brief of Attorney General Rogers filed in Case of Dinkens, et al, vs. Rogers, 187 F. Supp. 848, Opinion Adopted by Fifth Circuit in 285 F. 2d 430, Memorandum of Law served on Dinkens, et al, on 7-8-60 30

INDEX TO APPENDIX

	Page
APPENDIX 1:	A1-7
TEXT OF SOME PERTINENT FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS; FEDERAL RULES OF CIVIL PROCEDURE AND MISSISSIPPI STATUTES	
The Constitution of the United States, Amendment V	A1
Amendment VI	A1
PERTINENT FEDERAL STATUTES	A2-5
United States Code	
Title 28, Sec. 1254(1). Courts of Appeals; certiorari; appeal; certified questions	A2
Title 42, Secs. 1974, 1974 a-e incl. (Title III Civil Rights Act of 1960—Secs. 301-306, incl. H.R. 8601, 86th Cong., 2d Sess.)	A2-5
Sec. 1974. Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation	A2-3
Sec. 1974a. Theft, destruction, concealment, mutilation, or alteration of records or papers; penalties	A3
Sec. 1974b. Demand for records or papers by Attorney General or representative; statement of basis and purpose	A3
Sec. 1974c. Disclosure of records or papers	A3-4

Page

Sec. 1974d. Jurisdiction to compel production of records or papers A4

Sec. 1974e. Definitions A4

Sec. 1291. Final decisions of district courts A4

Sec. 2101. Supreme Court; time for appeal or certiorari docketing; stay A4-5

Title 18, Sec. 242. Deprivation of rights under color of law A5

PERTINENT FEDERAL RULES OF CIVIL PROCEDURE A5-6

Rule 1—Scope of Rules A5

Rule 81(a)(3):

(a) To What Proceedings Applicable A6

PERTINENT MISSISSIPPI STATUTES A6-7

Mississippi Code 1942 Annotated:

Sec. 2106. Elections—intimidating electors A6

Sec. 2111. Elections—fraud in registration of voters A6-7

Sec. 3275. Penalties on election officers A7

APPENDIX 2: In re Mrs. Walter Lewis, Circuit Clerk and Registrar of Elections of Bolivar County, Mississippi—No. D-C-1-61. Order of U.S. District Court, Northern District of Mississippi, Delta Division (Nov. 16, 1962) (Unreported) (R. 181-182), from which both parties appealed to 5 Cir. A8-10

Page

APPENDIX 3: Kennedy vs. Lewis (And reverse title) No. 20411. Per curiam opinion or order of U.S. Court of Appeals, 5 Cir., (Sept. 18, 1963) *denying* Kennedy's motions for summary reversal on his direct appeal and summary affirmance of Lewis' appeal or cross-appeal. (Unreported) A11-12

APPENDIX 3A: Kennedy vs. Lewis, 5 Cir., U.S. Court of Appeals, No. 20411. Argument and Submission (Extract from the Minutes of Nov. 15, 1963) (Unreported) A12

APPENDIX 4: Kennedy vs. Lewis (And reverse title) No. 20411. 325 F.2d 210, 5 Cir., Dec. 12/6/63, Reh. Den. 1-28/64 (R. 199-202) A13-15

APPENDIX 5: Kennedy vs. Lewis (And reverse title) No. 20411. *Judgement of U.S. Court of Appeals, 5 Cir., (Dec. 6, 1963) (R. 203) entered upon above opinion* A16-17

APPENDIX 6: Kennedy vs. Lewis (And reverse title) No. 20411. Order of U.S. Court of Appeals, 5 Cir., (Jan. 28, 1964), denying petition for re-hearing (Unreported) (R. 259). Entered upon Lewis' petition for re-hearing and supporting brief, (R.204-258). A18

APPENDIX 7: Kennedy vs. Lewis (And reverse title) No. 20411. Order staying issuance of mandate (Feb. 20, 1964) (Unreported) A19-20

APPENDIX 7A: March 9, 1964—Extension of above stay, Appendix 7, to and including March 21, 1964, (Unreported) A20

Page

APPENDIX 8: Kennedy vs. Lynd, et al, 306 F. 2d 222; (Miss., 5 Cir. Dec. 7, 11 62, Reh. Den. 8 8 62) Cert. denied, 371 U.S. 952, 9 L. Ed. 2d 500 (1963) A21-36

APPENDIX 9: In Re Theron C. Lynd, Registrar of Elections of Forrest County, Mississippi, Opinion of U.S. District Court, Southern District, Hattiesburg Division, No. 1604. Opinion of District Court of Jan. 15, 1962, holding this case abandoned, etc. and declining to pass upon the pleadings then existing (Unreported) A37-39

APPENDIX 10: In Re Theron C. Lynd, Same case supra in District Court. Order of said District Court of Feb. 16, 1962, upon opinion, Appendix 9, *Remanding* entire cause to files of the court. Appealed, resulting in 5 Cir. opinion, Appendix 8 (Unreported) A40

APPENDIX 11: Kennedy vs. Owen, et al, 321 F.2d 116, 5 Cir. Dec. 7 3 63. Stay denied 84 S.Ct. 12, 11 L.Ed. 2d 18, July 19, 1963 A41-44

APPENDIX 12: Kennedy vs. Owen, District Court Order, June 11, 1963. (Unreported) (decision on appeal see Appendix 11, supra, A41-44) A-45

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No.

MRS. WALTER LEWIS, CIRCUIT CLERK AND REGISTRAR OF ELECTIONS OF BOLIVAR COUNTY, MISSISSIPPI — Petitioner

vs.

ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES — Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, Mrs. Walter Lewis, hereinafter referred to as Lewis, petitions this Court to issue a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit to review its judgment against her entered on December 6, 1963, (R. 203; App. 5, A 16-17), pursuant to its opinion of that date, in *Kennedy vs. Lewis*, and reverse title, 325 F. 2d 210, (R. 199, App. 4, A13); Lewis', *timely filed petition for rehearing* with supporting brief was *denied* on *January 28, 1964*, (R. 259, App. 6, A18). Stays of the Fifth Circuit Mandate were granted (Apps. 7 & 7A, A19 & 20) to permit the filing of, and orderly action upon, this Petition for Certiorari.

INTRODUCTORY STATEMENT

Strange as though it may seem, the Record here shows that:

1. "*Secret Evidence*", or, "*secret charges*", if any, known only to respondent and his predecessor — never disclosed to said Courts below — never disclosed to Lewis — and which she never had any opportunity to disprove was the sole basis of the judgment order and opinion and judgment of the courts below, here sought to be reviewed; said "secret evidence", or "secret charges", were only *conclusionarily alleged* in the complaint as the reasons why respondent said he was entitled to the order judgments in the courts below under Title 42, USCA, 1974d.

2. *There was no evidence or proof of any kind below to support said conclusionary allegations of respondent's complaint* — even though Lewis had challenged the legal sufficiency of and factual existence or foundation for the said reasons by motions to dismiss and direct denials thereof in her answer.

3. Lewis, the sole defendant below, *was denied the implicit, inherent and indispensible right given her* by the *clear terms* and even the authoritative legislative history of said Section 1974d — and was also denied the inherent and implicit right as a defendant in this case or controversy — to have her day in court, to require the plaintiff to prove his case, if any, against her; and to have the District Court, *before rendering judgment*, consider or take into consideration and exercise its judicial judgment upon the evidence, if any he had, which the respondent should have introduced, and both her denial of its factual existence and her evidence of those denials; and the legal insufficiency of the al-

legations of the complaint stating the reasons why respondent alleged he was entitled to a judgment order of the District Court commanding her to perform an affirmative act, which she was under *no obligation or duty to commit or perform* except pursuant to a valid judgment order of the District Court.

4. Lewis, defendant below, was denied any opportunity to disprove said allegations of respondent's complaint and any evidence which he should have adduced in support thereof and to prove her denials thereof in her answer thereto.

5. The complaint (mis-named an application) filed in the District Court was an unsworn complaint or document; no affidavits of any kind were submitted in support thereof.

6. Respondent, plaintiff below, even failed and refused to offer evidence to the District Court in support of his said allegations when offered the opportunity to do so — he stood as making a motion for a judgment on the pleadings — in the face of Lewis' denials in her answer of respondent's said allegations.

7. The denials by Lewis in her answer of the factual existence of or foundation for said reasons so alleged by plaintiff below were left hanging in "mid-air" — never considered by the Courts below.

8. The District Court, contrary to its own view of this cause (R. 176-179) entered the judgment order (App. 2, A8-10, R. 181-182) solely because he felt bound by the language of the Fifth Circuit in *Kennedy vs. Lynd*, 306 F. 2d 222 (App. 8, A21-36), hereinafter fully discussed.

The Record here, for *clarity, demands* the foregoing and following Introductory Statement before considera-

tion of subsequent portions of this petition; especially before the presentation of the questions presented.

For brevity hereinafter, whenever we refer to Section 1974, 1974a-1974e we, of course, mean those sections of Title 42, USC; subsequent references to those sections will be without the aforedesignated title and compilation unless the circumstances at the point of mention demand the total designation of the title and compilation.

The proceeding below in the District Court under 1974d was begun as an adversary proceeding — a case or controversy — not an ex parte proceeding. Thus, throughout this petition, we use the word "complaint" instead of the word "application"; likewise, Rogers, for whom Kennedy was substituted when the latter became Attorney General of the United States on January 21, 1961, was therefore the plaintiff; likewise, Lewis is the defendant.

Due to the *voluminous nature* of the appendix to this petition, we are printing it as a separate document; as such, it will be handier to any examiner hereof than his having to flip backward and forward in one document in the course of examining any comments upon the contents of the appendix; for convenience, we place an index to the Appendix in the fore part of this document and at the same point in the separately printed Appendix.

If any examiner hereof should desire to inspect the allegations of the complaint stating the reasons upon which respondent relied in the District Court as entitling him to an order judgment thereof, they will be found by reference (R. 2, par. IV, and R. 5, par. 2), "*** information **jurisdiction".

Lewis' denials of those allegations are found in her answer (R. 142, par. 4, R. 143, par. 1).

Lewis is not claiming, and has never claimed, any privilege against self-incrimination — that is not in this case.

Among other errors and denials by the Courts below, Lewis claims a deprivation of due process of law, both substantive and procedural — both as to her liberty — her freedom from restraint or control by the District Court exhibited by its affirmative command forcing her to commit or perform or do an act which she would not otherwise be required to do and could not be otherwise required to do in this case upon this Record — without her having received due process of law in the proceedings culminating in that order; and as she did below, she questions the existence of jurisdiction in the District Court and the Fifth Circuit when the order was issued by the District Court if at that time the case or controversy had ceased to exist by virtue of her being prohibited, or not permitted, to litigate or challenge the legal sufficiency and the factual existence or the factual foundation for, or of, the conclusionary allegations in respondent's petition stating the reasons why he was entitled to a judgment order of the District Court under said Section 1974d.

OPINIONS BELOW

Though some of these have been stated above, the holding, substance and sequence of the opinions, judgments, or orders below in this cause have important significance on this Petition; those which are reported show the report thereof; *all others are unreported*; they are:

November 16, 1962 — Order of District Court (R. 181, App. 2, A8), from which *both parties* appealed to the Fifth Circuit;

September 18, 1963 — Per curiam opinion or order of Fifth Circuit, (R. 197, App. 3, A11), *denying* Kennedy's, Appellant below, motion for summary reversal and to summarily affirm as to Lewis', Appellee-Appellant, appeal;

November 15, 1963 — Argument and submission (App. 3-A, A12);

December 6, 1963 — Opinion of Fifth Circuit, *Kennedy vs. Lewis*, (and reverse title) 325 F. 2d 210, (R. 199, App. 4, A13);

Judgment of Fifth Circuit of same date entered thereon (R. 203, App. 5, A16), review of which this petition seeks;

January 28, 1964 — Per curiam opinion or order of Fifth Circuit *denying* [illegible] timely filed petition for rehearing (R. 259, App. 6, A17);

February 20 and March 9, 1964 — Orders by Chief Judge Elbert P. Tuttle of Fifth Circuit (Apps. 7, & 7A, A19, 20), granting and extending Lewis a stay of its mandate through March 21, 1964, and until this Court acts thereon, to enable her to file this Petition and accompanying documents.

To ascertain the grounds of the opinion and judgment of the Fifth Circuit in *Kennedy vs. Lewis*, supra, entered December 6, 1963, and for a complete understanding thereof the opinions in the two cases upon which the Lewis opinion is predicated (R. 199, 200, App. 4, A13, 14) must be presented; they are *Kennedy vs. Land* and *Kennedy vs. Owen*, infra, and the proceedings of the

District Court therein from which the appeals were taken; the Judgment Orders and the opinions of the District Court and the Fifth Circuit proceedings in *Lynd and Owen* are copied in the separately printed Appendix hereto and they are:

1. *Kennedy vs. Lynd* (App. 8, A21-36) — 306 F. 2d 222 (5 Cir., July 11, Reh. Den. Aug. 8, 1962), Cert. Den. (366 U. S. 952, 9 L. Ed. 2d 500) 1963;

2. *Kennedy vs. Lynd* (In Re Application Theron C. Lynd) (App. 9, A37), District Court Opinion January 15, 1962;

3. *Kennedy vs. Lynd* (App. 10, A40) District Court order on above opinion, February 16, 1962, — Appealed to Fifth Circuit;

4. *Kennedy vs. Owen, et al* (App. 11, A41-44), 321 F. 2d 116 (5 Cir., July 3, 1963); Stay denied July 19, 1963, 84 S. Ct. 12, 11 L. Ed. 2d 18;

5. *Kennedy vs. Owen*, et al (App. 12, A45), District Court order or judgment June 11, 1963; No Opinion; Appealed to Fifth Circuit.

JURISDICTION

The Judgment of the Fifth Circuit, here sought to be reviewed, was entered December 6, 1963, (R. 203, App. 5, A16) pursuant to its opinion of the same date, *Kennedy vs. Lewis*, 325 F. 2d 210 (1963) (R. 199, App. 4, A13); The petition of Lewis for rehearing thereof was denied by Fifth Circuit on January 28, 1964, (R. 259, App. 8, A21). The jurisdiction of this Court is invoked pursuant to Title 28 USC, Sec. 1254(1) (App. 1, A2).

QUESTIONS PRESENTED

1. In the adversary proceeding, the case or controversy, prosecuted by Kennedy against Lewis under Title

42 U.S.C., Section 1974d, did the Courts below err in entering "an automatic judgment" for Kennedy upon "secret evidence", if any, not disclosed to said Courts, consisting of only the conclusionary allegations of the complaint stating the conclusionary reasons why he claimed he was entitled to a judgment or order, unsupported by any evidence, thus unknown to Lewis, and which conclusionary allegations Lewis denied in her answer as therein set out; but upon which issues of fact so created, there was *no hearing of any kind by any Court at any time*; and did said Courts err in holding that Lewis could not defend herself and in predicating their said holdings or judgments or orders upon the two Fifth Circuit cases cited as *Kennedy v. Ladd* and *Kennedy v. Odom*, supra and infra.

2. Did the Courts below err in holding that though this was a case instituted and begun in the District Court under said Section 1974d as an adversary proceeding, a case of controversy, *Lewis could not defend herself against the charges made against her and could not litigate or challenge the legal sufficiency of, or the factual existence of, or foundation for*, the allegations of the complaint conclusionarily stating the reasons why Kennedy alleged he was entitled to a judgment or order of said Court commanding Lewis *to perform the affirmative act* of making the records and documents involved available for Kennedy's inspection and reproduction; and did the Court in so holding that Lewis could not defend the charges made against her deny Lewis' inherent and implicit rights as a defendant in such a case given to her by the terms of said Section 1974d; and did said Courts deny Lewis her rights of both substantive and procedural due process of law, including a denial of her liberty and a denial of her property right

or interest as a bailee for hire of said records, or both, under the Fifth Amendment to the Constitution of the United States; and did said Courts deny her right to have said District Court determine on the merits her right to confrontation under the Sixth Amendment if the reasons alleged by Kennedy in said Complaint were held by the District Court to be sufficient to entitle him to a judgment or order of said Court as requested by him.

3. Did the Courts below err in denying, *without giving any consideration to the legal merits thereof*, Lewis' Motion to Dismiss the complaint for its failure to state a claim upon which relief could be granted, her motion for a decree in her favor when Kennedy failed to adduce any evidence to support the allegations of the complaint, which stated the reason why Kennedy was entitled to a judgment or order of the District Court and which allegations Lewis had denied in her answer, or either, and her other motions to dismiss filed in the District Court.

4. Did the Courts below err in granting Kennedy any relief; and did the District Court and the Fifth Circuit *have jurisdiction* under Article III, Section 2 of the Constitution of the United States to grant Kennedy any relief when the judgment or order of the District Court was entered, if, prior thereto, at that time, and since, the proceedings in the District Court had ceased to be a case or controversy because of their holding that Lewis had no right to litigate, dispute, and challenge the legal sufficiency of and the factual existence of, or the factual foundation for, the reasons as conclusionarily alleged by Respondent, in the complaint as entitling him to a judgment or order of the District Court as requested by him.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case involves the following Constitutional provisions and Statutes of the United States, some Statutes of the State of Mississippi, and certain Federal Rules of Civil Procedure, the full text of which has been copied in the separately printed appendix hereto, except those which are presently quoted in this portion of the Petition:

1. The following portion of Article III, Secs. 1 and 2, of the Constitution of the United States:

"Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;— * * * to Controversies * * * *"

2. The following portion of Rule 8 of the Federal Rules of Civil Procedure:

"(b) Defenses; Form of Denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial."

3. Amendment V to the Constitution of the United States . . . A1.
4. Amendment VI to the Constitution of the United States . . . A1.
5. Title 28, USC, Sec. 1254(1) . . . A2.
6. Title 42, USC, Sec. 1974 . . . A2-3.
7. Title 42, USC, Sec. 1974a . . . A3.
8. Title 42, USC, Sec. 1974b . . . A3.
9. Title 42, USC, Sec. 1974c . . . A3-4.
10. Title 42, USC, Sec. 1974d . . . A4.
11. Title 42, USC, Sec. 1974e . . . A4.
12. Title 28, USC, Sec. 1291 . . . A4.
13. Title 28, USC, Sec. 2101 . . . A4-5.
14. Title 18, USC, Sec. 242 . . . A5.
15. Rule 1, Federal Rules of Civil Procedure . . . A5.
16. Rule 81(a)(3) . . . A6.

The following sections of the Mississippi Code of 1942, Annotated, Recompiled:

17. Sec. 2106 . . . A6.
18. Sec. 2111 . . . A6-7.
19. Sec. 3275 . . . A7.

STATEMENT OF THE CASE

In the "Introductory Statement" to this petition, pages 2-3 hereof, supra, we have said that the judgment of the Courts below were predicated, made or based: solely and alone on "secret evidence" or "secret charges", if any, and never disclosed to any Court or Lewis; *without any hearing of any kind* on the conclusionarily alleged reasons alleged by Respondent in his complaint filed in the District Court, purporting to constitute *the reasons why he was entitled to a judgment order commanding defendant, Lewis, to perform the affirmative acts* of producing the records involved for inspection

and re-production by Respondent. We said also that Lewis was never permitted or given an opportunity to be heard upon her answer denying said allegations to disprove said conclusionarily alleged reasons nor was plaintiff ever required to produce evidence in support of said allegations; and without any judicial hearing upon or disposition or decision upon Lewis' various motions filed below.

This is so, and such occurred because the Courts below held, predicated upon *Lynd* and *Owen* from the Fifth Circuit, supra, that the legal sufficiency of and the factual existence or foundation for said reasons were not open or subject to Judicial review or ascertainment. (Kennedy v. Lynd, 306 F. (2) 222, Sections 6 and 8. of Opinion, page 226).

In this "Statement of the Case", we will demonstrate the above; but only after we have *first referred* to the jurisdiction or lack thereof of the District Court under the peculiar circumstances of this case.

In accordance with the Rules of this Court, *we first refer to the jurisdiction of the District Court.* The jurisdiction of the District Court below was invoked under Title 42, USC, Section 1974b. Such jurisdiction continued to exist in the District Court and Appellate Court below as an Appellate Court, *unless the District Court lost jurisdiction of this case, or jurisdiction thereof ceased to exist, prior to or at the time of the entry of the order judgment of the District Court on November 16, 1962 (R. 181-182).* It is elemental that a Federal District Court has no jurisdiction of any proceeding unless same is or does constitute a case or controversy under Article III, Section 2, of the Constitution of the United States. When this case in the District Court reached

the point in the proceedings *where Lewis could not defend herself against the charges made against her*, could not challenge or contest the legal sufficiency or the factual existence or foundation of or for the reasons alleged by Respondent as entitling him to an order judgment of the District Court, then it is clear that this original case then and there ceased to be a case or controversy; and the District Court should have dismissed same rather than granting a judgment order against defendant. Strangely enough, this point was reached in the case in the District Court as per the holding in *Kennedy vs. Lynd*, 306 F. 2d 222, 226, when Lewis admitted in her answer only that she was the Circuit Clerk and Registrar of Elections of Bolivar County, Mississippi — that she had the possession and control of the documents involved — that petitioner's predecessor had requested her permission to inspect and reproduce said documents and that she had denied same — and when as the Record shows she had reasonable notice of the pendency of the filing of this case.

From that point on out to date: Lewis was not permitted to prove the denials in her answer of Respondent's conclusionary allegations in his complaint upon which he predicated his claim to a judgment order of the District Court; she was not permitted to defend herself against such factual charges; her motions to dismiss challenging the legal sufficiency of said conclusionary allegations were never considered upon their merits. Thus, there no longer existed in the District Court any controversy, any dispute, any adversary proceeding. Thus, no jurisdiction in the District Court under said Article III, Section 2, of the Constitution of the United States. This point was mentioned and brought up to the District Court (R. 156). It was

mentioned in the brief filed by Lewis in the Fifth Circuit. This Court and both below notice their own jurisdiction sua sponte; but the Courts below were not left to that. If this Court should find that no jurisdiction existed in the District Court to have issued the judgment order (R. 181-182), it may in the exercise of its supervisory powers either dismiss the cause or remand it with directions to the District Court to pick up where it left off and let Lewis have that which she is entitled to — the exercise of the right to defend herself against the charges made against her.

The following is a statement of the facts shown by the Record which are material to the consideration of the questions presented.

Throughout the pleadings, the statements of counsel and the Court in the District Court reference was made to the sections of Title III of the 1968 Civil Rights Act under which the proceedings were begun which culminated in the District Court and which was begun as an adversary proceeding, a case or controversy. In view of this and for the convenience of the Court, we *correlate the five sections of said Title III with the corresponding section of the compilation thereof, Title 42, USC, 1974, 1974a-e.* Hereafter, we will principally refer to the section of the compliation, thus substituting it for the corresponding section of said Title III as used in the Record. Each section of said Title III will be designated on the lefthand side of this page, and the corresponding section of the compilation, Title 42, USC, will be placed opposite it, thusly:

Section 301 is 1974;
Section 302 is 1974a;
Section 303 is 1974b;

Section 304 is 1974c;
Section 305 is 1974d;
Section 306 is 1974e.

On August 11, 1960, Rogers, the then Attorney General of the United States, made a written request under 1974b upon petitioner, the Circuit Clerk and Registrar of Elections of Bolivar County, Mississippi, for permission to inspect and reproduce all records therein described (R. 4,5) which were in her custody, possession or control, and stated therein (R. 5) the reasons why he asked such permission and the purpose to which he would put it (R. 5, par. 1 & 2).

Lewis refused this request (R. 8).

On January 11, 1961, said Rogers filed his unsworn complaint (improperly designated an application) (never supported by any affidavits), in the District Court below in this case, an adversary proceeding, a case or controversy, under the provisions of 1974d against Lewis, said Circuit Clerk and Registrar, requesting an order of the District Court commanding Lewis to perform the affirmative act of making said records available to him for the purpose of inspection and reproduction; Rogers alleged that the records were in Lewis' possession, custody and control and that he had made the above request, which Lewis had refused; he made the said written request Exhibit "A" to his complaint, a part thereof; and thereby conclusionarily alleged in the complaint the reasons why he made the request and which he said entitled him to the aforesaid order from the District Court; he also stated the purpose to which he would put the said records and information therefrom secured (R. 1-5, R. 2, Par. IV, R. 5, par. 1 & 2). Lewis was made the sole defendant in the case; notice

was served upon Lewis that the complaint would be submitted to the District Court twenty-two days thereafter; on January 21, 1961, Kennedy assumed the office of U. S. Attorney General and pursuant to his motion so to be, the Court entered an order on July 7, 1961 (R. 53-54) substituting him as plaintiff in the place of Rogers; timely, and within the period allowed by the Court, defendant, Lewis, filed various motions challenging the constitutionality of all sections of said Title III, compiled as aforesaid, together with her motion to dismiss the complaint for failure of the complaint to state a claim upon which relief could be granted (R. 64-65). After various proceedings, unimportant here, and with said motions pending and within the period allowed by order of the Court, Lewis filed her answer (R. 141-148); it admitted some portions of the complaint and denied other portions thereof — Lewis admitted that she was Circuit Clerk and Registrar of Bolivar County, Mississippi, and had continuously so been since January, 1952; admitted that on August 11, 1960, the aforesaid written request dated August 5, 1961 (R. 4 & 5) had been made of her for permission to inspect and reproduce said documents and that she had refused same.

At this point, respondent's allegations in the complaint, of the reasons why he made the request of Lewis to inspect and reproduce said documents, together with Lewis' denials thereof, and respondent's statement of the purpose of his seeking the information contained in said records, becomes the controlling factors in this case; for the convenience of the Court, we quote first the reasons alleged by respondent (R. 2, par. IV, par. 2) and then Lewis' denials thereof:

"* * * information in the possession of the Attorney General tending to show that distinctions on the basis of race or color have been made with respect to registration and voting within your jurisdiction."

Lewis' denials thereof in her answer (R. 142-143) are thus:

"Accepting the said letter, which purports to be a demand according to its terms, dated August 5, 1960, as a part of the complaint of application herein filed against her, defendant or respondent says that she is without knowledge or information sufficient to form a belief as to the truth of the allegations in said Exhibit "A" that the demand is based upon information in the possession of the (then) Attorney General tending to show that distinctions or discriminations on the basis of race or color have been made with respect to registration and voting within defendant's jurisdiction and, therefore, defendant denies same.

"Defendant or respondent believes that on August 5, 1960, the date of said alleged demands, and on August 11, 1960, the date of the delivery of said alleged demand to this defendant, and on January 11, 1961, the date of the filing of the Application or Complaint against the defendant, *the then Attorney General of the United States, did not have information, or reasonable information, upon which a reasonable conclusion could be drawn or based that she*, this defendant, had made distinctions or committed discriminations on the basis of race or color with respect to registration and voting within Bolivar County, Mississippi; and, therefore, believing same, she must, in the discharge of her official duty as she conceives it to be, *deny and*

does hereby deny that the said Attorney General of the United States had such information, and, therefore, so denies that on said date or dates any basis existed for the making of the said alleged demand upon her." (Emphasis added).

Respondent's statement of the purpose of the request (R. 5, par. 2) is as follows:

"The purpose of this demand is to examine the aforesaid records in order to ascertain whether or not violations of Federal law in regard to registration and voting have occurred." *Lewis' denial of said allegations of purpose* (R. 143) is thus:

"Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 3 of the said alleged letter of demand made Exhibit "A" to the Complaint or Application and made a part thereof, to the effect that: 'The purpose of this demand is to examine the aforesaid records in order to ascertain whether or not violations of Federal law in regard to registration and voting have occurred', and, *therefore, defendant denies same.*" (Emphasis added)

On August 21, 1962, pursuant to proper notice from the Court, counsel for the parties-plaintiff and defendant and *the defendant herself assembled at Oxford, Mississippi, ostensibly* or *purportedly* for *the purpose of having a hearing or trial on the merits of this case;* but, as the Record shows, (R. 149-182) *THERE WAS IN FACT NO TRIAL ON THE MERITS AND, NO HEARING ON THE MERITS WITHIN JUDICIAL CONTEMPLATION OF THAT TERM WHEN USED IN CONNECTION WITH A CASE OR CONTRO-*

VERSY. What happened upon said assemblage: (R. 149-182)

Both parties announced ready — respondent's counsel contended he was entitled to the judgment order as prayed for *requiring Lewis to commit the affirmative act to produce said documents* — he said this based and predicated upon *Kennedy vs. Lynd* issued by the Fifth Circuit, 306 F. 2d 818, 822, because it held there were only two items subject to litigation *in this so-called* case or controversy which were (1) whether the request or demand had been served upon Lewis and (2) whether the records referred to were in her possession or control — counsel for defendant asked the Court to inquire whether plaintiff had proof to offer or was the defendant to understand that plaintiff would offer no proof — the Court stated that the plaintiff had rested his case — he had no proof to offer and, in substance, stood as if plaintiff made a motion for judgment on the pleadings — counsel for Lewis stated that in that state of the case, "* * Defendant *without waiving her right to put on proof* asks that this Court enter a decree for the Defendant * * *"; and then proceeded in the subsequent portions of the Record to assert why she was entitled to a decree in her favor dismissing the complaint — among other things, petitioner made it clear that Lewis had made the aforesaid denials of the aforesaid allegations of plaintiff's complaint, respondent here; *among the reasons* urged by defendant were said denial — that Lewis was entitled to defend against the charges made against her — as a defendant in a case or controversy — that this was not an ex parte proceeding — that there were differences and distinctions between the Lynd and Lewis cases — asserted that if Lewis couldn't defend herself, *then there was*

no case or controversy and the Court was deprived of jurisdiction or there existed a denial of due process — that the complaint stated no claim upon which relief could be granted against Lewis'; and that not only the wording of the Statute, but also the legislative history of 1974d gave Lewis the right to defend herself in every particular, and required plaintiff to prove his case — that any order issued by the Court without conducting the hearing as a case or controversy would constitute an invalid and arbitrary order judgment and would deny defendant due process of law — that there could be no case or controversy if there were no disputes and no actual controversies upon the decisive allegations of the complaint — defendant made other assertions and grounds for her right to defend herself — counsel for Respondent said that Lynd had decided everything and that neither the legal sufficiency of nor the factual existence or factual foundation for the reasons asserted by respondent could be questioned or disproved or litigated (R. 149-176); the Court pointed out the confused state of the decisional law in the Fifth Circuit by saying (R. 175) that through Bruce, the Fifth Circuit had held that a proceeding such as in Lynd was not a case or controversy and then, in Lynd, they said it was — the Court said that what Lynd holds is that the Attorney General of the U. S. was entitled to make a conclusive, final, non-litigable, non-controversial, *ex parte determination of* the sufficiency of his own reasons for the Court issuing the order — that it appeared the Court was bound thereby; the Court (R. 177, et seq.) asserted that he considered the matter a case or controversy from the inception — that Lewis was entitled to due process but that he felt bound by the decision of the Fifth Circuit — that he didn't agree with the Fifth

Circuit; but that he would consider all features and render a decision shortly and offered both parties an opportunity to submit any memoranda on the points of due process and whether the United States, as a Sovereign, could cast duties and obligations upon an officer of another without the consent of that sovereign; Lewis argued to the court all of her motions to dismiss. *The defendant, Lewis, was present in open court, ready to testify in opposition to any testimony adduced by respondent and to prove and support her denials and assertions in her answer.*

Lewis having protected, in every way, her right to put on proof to support her denials of the aforesaid allegations in the complaint, still has this right if, as and when she is given an opportunity to have a judicial hearing and determination upon the issues of fact made by her answer and her several motions to dismiss. For this Court to pass upon the merits of said motions before the District Court would be premature and the exercise of original jurisdiction.

On November 16, the Court feeling that he was bound upon all questions by the said case of *Kennedy vs. Lund*, supra, issued his "automatic" order judgment, upon "Secret Evidence" (R. 181-182) commanding Lewis to perform, in part, the affirmative act sought by Respondent; and purported to overrule all motions filed on behalf of Lewis. It is apparent, however, that as he followed Lynd, he merely overruled them because that case prevented him from determining the legal sufficiency of respondent's allegations and not because of any lack of merit in the motions.

The above order is silent on whether or not it overruled or sustained Lewis' *motion for a decree, supra,*

but we assume that it so did — if not, it is left undetermined by the District Court; the order, on its face, clearly shows that no evidence of any kind was offered or introduced by either party.

But here lies one of the quirks of this case. If no evidence was adducible upon respondent's complaint, then Lewis' admissions in her answer could not be considered as evidence and should not be any part or parcel of an order granting respondent's order judgment — if this is not true, then there is a further deprivation of Lewis' rights and due process of law because this would amount to Respondent being entitled to adduce proof and *Lewis being denied that right.*

Both parties feeling aggrieved by the said order appealed. The Fifth Circuit issued the opinion and entered the judgment reflected by this petition for certiorari (A13 & A16).

REASONS FOR THE ISSUANCE OF THE WRIT

As shall appear from the following argument, this writ should be issued for the following reasons: (1) The decision of the Fifth Circuit Court of Appeals in this case is in conflict with the decisions of other Courts of Appeal on several questions which go the heart of the case at bar, including the point that the cases of *Kennedy v. Ezzell* and *Kennedy v. Owen*, supra, are here held to be the basis and foundation of the opinion and judgment here sought to be reviewed and those two cases are in conflict with decisions of other Courts of Appeal under similar circumstances; (2) The Fifth Circuit Court of Appeals in this case has decided important questions of Federal law which have not been but should be settled by this Court; this Supreme Court has never passed upon or determined the true meaning and effect

of Title 42 U.S.C.A. 1974d and the rights of the respective parties to a case filed thereunder; and has never decided any case upon or settled the many questions involved in said 1974d or the remainder of Title III compiled as Section 1974, 1974a-e of Title 42 U.S.C.A.; and (3) the Fifth Circuit Court of Appeals has in this cause decided Federal questions in a way in serious conflict with applicable decisions of this Court, including the due process of law provision of Amendment V to the Constitution of the United States; and has so far departed from the accepted and usual course of judicial proceeding, or so far sanctioned such a departure by a lower Court, as to call for an exercise of this Court's power of supervision.

As apparent from the questions presented herein at pages 7-9 hereof, they are so entwined and interwoven together and the reasoning and argument in one flows over into the other to such an extent that clarity and brevity will be promoted by addressing our total argument to all of the questions presented without trying to argue each question as a separate and distinct point. However, whenever possible, we will subdivide this argument into appropriately designed portions.

This case and those upon which it is specifically predicated announce rules which vitiate and tend to destroy the very foundation of our government and the judicial processes of our Federal and State Courts. The Courts below announce a rule of statutory construction which permits and glorifies "secret evidence" and "secret charges" as the basis of judicial action. This is violently contrary to the condemnation which this and other Courts have expressed upon "secret evidence" and "secret charges", "no day in court" and "no due process".

The Courts below, but the District Court by mandate of the Fifth Circuit, have said by their decisions herein that governmental action may be predicated upon secret, arbitrary and an unlitigatable determination or adjudication by Respondent that the judiciary must sustain that Executive determination or finding even though the Court does not know and cannot learn or determine the facts which constitute the basis thereof.

"Woe is the day" when the judiciary abdicates and the unbridled Executive Department becomes the accuser, the Judge and the jury — undressed of its slogan and catchy phrase of the "right to vote", the foregoing abdication is what is sought here. *Permit this "take over"* by the Executive and the next and *more extensive conquest will be* easier and with precedent.

The Courts below have announced a rule of statutory construction that even though a Federal statute — the same would apply to a State statute — which clearly authorizes a Court to determine the judicial rights of parties litigant may be rewritten and construed directly contrary to said terms of that statute; and this even when the legislative history of that statute is clear in giving a party defendant before the Court a right as a party defendant to defend herself against the charges made against her.

A. *BY THE PROVISIONS OF SAID SECTION 1974d, LEWIS COULD LITIGATE AND THE DISTRICT COURT IS VESTED WITH THE POWER AND AUTHORITY TO DECIDE ALL ISSUES OF FACT AND DETERMINE ALL QUESTIONS OF LAW CONCERNING WHETHER AN ORDER TO PRODUCE SHALL BE ISSUED; SUCH SUSTAINS LEWIS' CONTENTIONS.*

Petitioner asserts unequivocably that the true meaning of the terms of said Section 1974d and as also shown by the authoritative Legislative history thereof is that she may litigate in the District Court both the legal sufficiency of and the factual existence and foundation for the reasons alleged by Respondent as entitling him to the judgment order of the District Court.

The House Judiciary Committee statement of the meaning of Section 1974d which was presented to Congress and upon which it acted is thus:

> "* * * that in the event of nonproduction, jurisdiction would be conferred upon the Federal district courts to resolve any dispute which might arise in connection with the exercise of the authority conferred upon the Attorney General by this title including appropriate process to compel the production of the record or paper."

Lewis says this Section [redacted]:

> "It does not contain any restriction or exception upon or to the court or judicial proceeding provided for thereby. We say this in spite of Lewis, *Kennedy v. Lynd* and *Owen*, supra. If there is an exception, where is it? There is no prohibition therein against the application of the Federal Rules of Civil Procedure to this proceeding. The Federal Rules of Civil Procedure have the force and effect of statutes — they apply to this proceeding fully, wholly and completely. See *Federal Rules of Civil Procedure*, Rule 1, and *Annotations* under Note 24, *U. S. C. A.*, and Rule 81a(3). There is nothing in this Section which purports to amend or repeal any Federal Rule of Civil Procedure. There is nothing to indicate that the Attorney General is exempted or relieved of any obligation that otherwise exists upon any

complaining party litigant in a Federal District Court. There is no indication that any "automatic order" will, would or could issue under this Section. There is no restriction which prohibits the District Court from determining the factual foundation for, if any, or the legal sufficiency of the reasons alleged by the U. S. Attorney General in his complaint, filed under this Section wherein he requests a court order to compel production of the documents and there is nothing to indicate that the court cannot exercise its judicial powers of review or ascertainment of such factual foundation or sufficiency of said allegations in said complaint. [redacted] There is nothing in this statute upon which any claim to any order based on "secret evidence" — can be sustained — secret evidence kept from the court — not known to it and not ascertainable by it and, likewise, as to Lewis. There is nothing in this Section which would indicate or suggest or even permit an "ex parte" proceeding to be had. There is no duty existing on any registrar to grant the request or demand of the U. S. Attorney General to inspect, copy, etc. said documents upon which any predicate for an ex parte order could be issued as such request or demand creates no duty on the registrar to accede thereto. The U. S. Attorney General did not seek and is not given the subpoena power. The language of this section opens "wide the doors" for the full exercise by the Court of all of its powers under all of the law for the Court, in the exercise of its judicial powers, to determine whether or not an order to compel production shall not or shall issue.

What else do we readily find dealing with the meaning of §1974d, which would indicate whether there is or is not any restriction as contended for by Kennedy and as found by the Court in Lewis, *Kennedy v. Lynd* and *Owen? We find no evidence that any restriction exists.* In fact, *all of the evidence supports Lewis' contention in the District Court and in this Court that there is no restriction on such proceeding.*

When we turn to the U. S. House and Senate hearings in 1959 on the preservation of voter records bill which is now said §1974d, we find that Rogers, the then Attorney General of the United States, himself, gives us testimony that *absolutely supports Lewis* in her contentions and *totally contradicts the claims of Kennedy and the holding of the Court in Lewis, Kennedy v. Lynd and Owen*, supra. Does he say the Court cannot resolve *any dispute?* Does he say the hearing and proceedings before the District Court are restricted in any way? His answer to both questions is *NO.*

The wording of the provision that Rogers was talking about in both hearings now to be mentioned were exactly the same as those contained in the finally enacted §1974d. At page 211 of the House of Representatives Hearings before subcommittee No. 5 of the Committee on the Judiciary, House of Representatives, 86th Cong., 1st Sess., when testifying on March 11, 1959, Rogers said:

> "In the event of non-production, jurisdiction would be conferred upon the Federal district courts to resolve *any dispute* which might arise in connection with the exercise of the authority conferred." (Emphasis added).

U. S. Attorney General Rogers also testified before the U. S. Senate subcommittee on Constitutional rights

of the committee on the Judiciary, 86th Cong., 1st Sess., on Friday, March 20, 1959, and he said (P. 191, Par. 3) the same thing on the same provisions:

> "In the event of non-production, jurisdiction would be conferred upon the Federal district courts to resolve any dispute which might arise in connection with the exercise of the authority conferred."

At page 192 of the Senate hearing, supra, and at page 212 of the said House hearing, he gave the following reasons why the U. S. Attorney General did not ask for and should not have the "subpoena power" in regard to the records referred to in said Title III, § § 1974, 1974a-c. In the Senate hearing he said thus:

> "The subpoena power might be viewed by some as an attempt by the Federal Government to interfere with State control over voting records."

In the House hearings, he said thus:

> "In other words, we thought the subpoena power might be construed as an interference with the State's power over voting, and we wanted to limit it merely to the right of inspection so we wouldn't be accused of requiring the people to produce the records in Washington or somewhere else."

We have these hearings before us and we assert unequivocally that at no time under any circumstances did the Attorney General or the Department of Justice or anyone else in the position to make an authoritative statement contend that there was any restriction of any kind upon the court proceedings under said § 1974d, 1974a-c, which would justify the holding of this Court in *Lewis*, *Kennedy v. Lynd* and *Owen*.

We submit that there is no legislative history or statutory language authority anywhere which says that in a § 1974d, § 305, proceeding the U. S. Attorney General does not have to allege and prove, as in a regular court proceeding and subject to the Federal Rules of Civil Procedure, that there are reasonable grounds to believe and that he does believe that discriminations because of race, color or previous condition of servitude are being made, at the time of the request to inspect the documents, or when the § 1974d suit was filed in the District Court against voters in the county of the registrar of whom the request is made; thus the Attorney General of the U. S. must allege and prove, in said § 1974d, proceedings, that he has reasonable grounds to believe and does believe persons *otherwise qualified by law* are being subjected by the registrar to distinctions because of race in voting in that county. We think it is not too much for the Attorney General of the United States to be subjected to these requirements — if he does not believe the information he has, he should not seek the records.

At this point, it is significant to mention that *no one has ever asserted and no court has held that the request of the U. S. Attorney General* for *permission* to inspect and copy *records creates any* duty of any kind, under any circumstances upon Lewis, or any registrar, to comply therewith. The U. S. Attorney General does not have the subpoena power. Thus, there being no duty upon the registrar to comply with the request or demand, we then have the inevitable result that the filing of the complaint or application of the Attorney General under said § 1974d, § 305, is an original suit or the beginning of a controversy in the process of which "disputes" are contemplated to be presented to and decided by the Court.

It has never been contended by any of the above persons or officials that a § 1974d. proceeding is ancillary to anything. Even *Kennedy v. Lynd*, 306 F. 2d 222, page 227, last two lines on lefthand column, recognized it as an absolutely independent and distinct proceeding from any suit brought by the Attorney General under § 1971, Title 42, *U. S. C. A.*

The record on the trial of the case of *Crum Dinkins v. The Attorney General of the United States* in the District Court of Alabama, 187 F. Supp. 848, the opinion being adopted by the Fifth Circuit in 285 F. 2d 430, *Crum Dinkins, et al. v. Rogers, Atty Gen.*, shows that during the course of the trial in the District Court, Harold Greene, who was prosecuting the case under § 1974d, on behalf of Rogers the then Attorney General, and who was on the *brief in the Fifth Circuit* in Lewis— he [redacted] the argument for Kennedy in the Fifth Circuit in Lewis — stated his understanding and that of the Department of Justice upon the meaning and Legislative history of § 1974d and the power of the court thereunder. Said 1974d became effective May 6, 1960 and on July 13, 1960, 37 days thereafter Mr. Greene, solemnly speaking to the District Judge in advocacy of Rogers' position in that case, said at page 90 of the printed record in the Fifth Circuit:

"As we read the *Civil Rights Act of 1960*, and *as we read the legislative history of that Act*, it was the intention of the Congress *that all controversies arising under Title III, the records demand*, should be litigated and adjudicated *within the framework of* Section 305, in which if gives the District Court of the United States *the power to determine whether or not a demand for records should be enforced*. We have cited the testimony of the Attorney General to that effect, who

was the — who submitted this particular proposal to the Congress." (Emphasis added).

What could be more conclusive than that statement — what could be entitled to more weight? The *intent* of Congress could not have changed. The wording of the statute has not changed. Greene treats "controversies" as synonymous with "disputes".

In view of the foregoing, how can the words "all disputes" and the words "all controversies" be translated or turned into anything less than "*all*"? This excludes any exceptions.

What danger, if any, is implicitly inherent in Kennedy v. Lynd, Owen, *and the opinion of this Court in Lewis rendered December 6, 1963?* There is clear and present danger — there is permanent danger — how and why?

The answer is that if a statute so clear, definite and certain as said § 1974d, and the entire Title III and the Legislative history thereof, including solemn statements before House and Senate committees and in court, are not to be accepted, then the question arises, why not? In other suits in other fields, *Kennedy v. Lynd, Owen* and *Lewis could be well cited* to sustain the proposition that the *definite meaning of a statute, clear as to that meaning, whose Legislative history is clear as to that definite and certain meaning, could be by this Court construed to mean something completely and totally different.* This, we submit, is a dangerous course to follow and one which does not comport with established proceedings and administration of justice in the Federal courts.

The words of § 1974d, "appropriate process" are most significant on this point of restriction or exclusion. Under § 1974d, who is to determine what is appropriate

process — Of course, the Court alone is to determine that and also it is the sole determinator of whether any order or process shall issue or shall not issue, *U. S. v. Wood* 295 F(2) 772, 779. "Appropriate process" means, of course, process, if any, to which the District Court finds the complaining party — Kennedy here — is entitled under the law, the facts and pleadings — such also is the rule as to an appropriate judgment. The Court is also the sole entity to determine whether any process should or should not issue. *Smith vs. Whitmore*, 276 F. 2d. 741, 745.

Said Judiciary Committee says this § 1974d, § 305, means or provides:

> "That in the event of nonproduction, jurisdiction would be conferred upon the Federal District courts to resolve *any dispute* which might arise in connection with the exercise of the authority conferred upon the Attorney General by this title including appropriate process to compel the production of the record or paper." (Emphasis added).

In the 1960 hearing before the full Senate Judiciary Committee Deputy Attorney General Walsh said the Federal Rules of Civil procedure would apply to a 1974d court proceeding. Before the full Senate Judiciary Committee in a hearing held on *March 28, 1960*, U. S. Attorney General Rogers, through Deputy Attorney General Walsh (p. 9, par. 8) (Rogers p. 1 having laryngitis), said that 1974d means exactly the same thing as stated by the House Judiciary Committee, supra.

Congressman Cellar, Chairman of the House of Representatives Judiciary Committee, on March 10, 1960 said on the floor of Congress in 1960, advocating the adoption of Title III of H. R. 8601, Cong. Record 1960, Vol. 106, p. 5200, Bound Edition that § 1974d means

exactly the same thing as written by the House Judiciary Committee — and also quoted its stand on all other provisions.

That no duty is created upon Lewis or any registrar by the mere circumstance of Rogers or Kennedy requesting or demanding her permission to inspect, copy and reproduce the records is so stated in Rogers' brief filed in the District Court in *Crum Dinkins*, supra, 187 F. Supp. 848, opinion adopted by Fifth Circuit, 285 F. 2d 430; by virtue of the adoption, the statement in the brief is, we think, equivalent to making such a statement in or before the Fifth Circuit. The statement referred to is found on page 8 of Rogers' Memorandum of Law in the District Court served on Crum Dinkins, et al, Registrars, on July 8, 1960 — quoting from the brief, prepared, we assume, by Mr. Greene, then and now of the Department of Justice, we find:

> "On the other hand, a demand for records for the Attorney General pursuant to Section 303 of the 1960 Act, (he is referring to what is and was S. 1974b in the above compilation) does not create a justiciable controversy, for it alone is insufficient to obligate those upon whom the demand is made to do any act. An enforcement order by District Court pursuant to Section 305 is necessary before a duty to comply with the Attorney General's demand arises."

In the event Respondent denies any of the assertions above made, then in our reply to any opposition which he may file hereto, we will quote the documents referred to which are not otherwise quoted in the Appendix hereto.

Whenever any Court proceeding is created by statute and as here Kennedy, Petitioner, is given the authority

to institute suit against Lewis, she is thereby inherently vested with the right to make full defense against all charges asserted against her. If the rule were otherwise, then the statute itself would be violative of substantive and procedural due process and unconstitutional.

B. *SECRET EVIDENCE CANNOT CONSTITUTE THE BASIS OF JUDICIAL ACTION; THE DECISIONS OF THE COURTS BELOW DEPRIVED LEWIS NOT ONLY OF HER INHERENT RIGHT AS A DEFENDANT, BUT ALSO HER LIBERTY UNDER DUE PROCESS OF LAW PROVISION OF THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES; IN A CASE OR CONTROVERSY LEWIS CAN LITIGATE ALL POINTS BOTH LAW AND FACT; IF NO CASE OR CONTROVERSY, NO JURISDICTION EXISTS IN THE DISTRICT COURT OR THE FIFTH CIRCUIT.*

Secret evidence has been consistently condemned by the Supreme Court of the United States and the Fifth Circuit in the following cases: *Dixon v. Alabama State Board of Education*, 5 Cir., 294 F. 2d. 150, Cert. Den. 368 U.S. 930 (1961); *Greene v. McElroy*, 360 U.S. 374 (1960); *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 163, 95 L. Ed. 817.

Among the rights denied Lewis by the proceedings below is her freedom from restraint or freedom from control by an order of the Courts below made without her having the rights of a def. to defend herself against the charges and when she was denied due process of law in protecting herself against such deprivation. The deprivation is that she is commanded to do or perform

an act which otherwise she would not be required to do. Such a deprivation is not to be permitted under the circumstances in this case. *Kent v. Dulles*, 357 U.S. 116, 2 L. Ed. 2d. 1204, 1210.

The proceedings below clearly deprive Lewis of both substantativ and procedural due process. *Cafeteria Workers v. McElroy*, 367 U.S. 886, 6 L. Ed. 2d. 1230 (1961); see also dissent by Justices Brennan, Chief Justice Warren, Justices Black and Douglas, wherein, at page 1239, they say:

> "Such a result and effect nullifies the substantive right — not to be arbitrarily injured by government — which the Court purports to recognize. What sort of right is it which enjoys absolutely no procedural protection . . . the right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principal basic to our society." (Citing cases, including Joint Anti-Fascist Refugee Committee v. McGrath, supra, 341 U.S. 123, 168, 95 L. Ed. 817).

Secret evidence has recently been condemned in the Fifth Circuit in the case of U. S. v. Atkins, 323 Fed. 2d. 733, which held that no applicant for registration could be denied registration upon a lack of good moral character without having an opportunity to defend against and be heard upon the question of his character.

To hold Kennedy's (originally Rogers') statement of the basis and purpose of the demand (R. 4 & 5) as conclusive in the face of a denial by Lewis that he had, in fact, such basis and purpose constitutes an invalid and unconstitutional legislative adjudication of an ultimate evidentiary fact which is thoroughly beyond the

competence of Congress under the Constitution. *This would constitute an invalid legislative determination that Lewis was guilty, or that the Respondeat had reasonable grounds to believe Lewis was guilty of felonies and misdemeanors under both Federal and State law.* (A. 5, 6 & 7). *Such a conclusive presumption stultifies the judicial process* and is contrary to the basic principles of "fair play" and "even-handed justice" which is demanded by the due process clause of the Fifth Amendment. Of course, this needs no citation of authority.

If the Courts below and in Lynd and Owen, supra, so hold in their construction of said 1974d it is violative of said due process clause; if, in fact 1974d means that Kennedy's statement of the reasons alleged entitled him to an automatic judgment order is in complaint or application conclusive and cannot be litigated in the District Court by Lewis with "all of the weapons" afforded by the due process clause and the Federal Rules of Federal Procedure just like any other case, then this Court shall have construed or enforced a construction of said Title III which is violative of due process and such enforced construction is invalid as comparable to that condemned by the Supreme Court in the case of *Shelley vs. Kraemer, 334* U. S. *1, 92* L. Ed. *1161.* The rule of Shelley, supra, is equally applicable to the judiciary department of the United States.

There is nothing in Title III, as we read it, which prevents Lewis or any other Registrar in her position from having and exercising her "due process" rights and privileges.

Unless Lewis is correct in her contentions in this case, the District Court of the United States and this

Court will be but a mere "rubber stamp" for an invalid enactment of Congress violative of the said due process clause.

When Lewis was decided by the District Court on November 16, 1962, the decisions of this Court were in irreconcilable conflict if Bruce, supra, meant what is ordinarily understood would be conveyed by the language that a 1974d proceeding was not a suit of any kind. A suit is synonymous with case under said Article III, Section 2.

In other portions of this argument we demonstrated that *Kennedy vs. Lund*, supra, does not constitute a valid holding of this Court upon any part or parcel of 1974d because, among other things, to so interpret it would violate the rule of Thomas, supra. Hudson v. Newell from the 5th Circuit; Sinor, other Circuits and this Court, infra.

See the following three cases from the Fifth Circuit and the others from other Circuits:

Hudson vs. Newell, 172 F. 2d 848 (1949); *U. S. vs. Sinor*, 238 F. 2d 271; *Thomas vs. Thomas*, 165 F. 2d 332 (1945).

The cases from this Court and other Circuits clearly support the rule that a Circuit Court of Appeals cannot properly exercise anything but Appellate jurisdiction in this case; cannot and should not decide or pass upon matters not judicially determined or decided by a District Court: Eighth Circuit, *Holliday vs. Great Atlantic & Pacific Tea Co.*, 256 F. 2d 297; *O'Malley vs. Cover*, 221 F. 2d 156; Second Circuit, *Dictagraph Products vs. Snontone Corp.*, 231 F. 2d 867. Cases from every Circuit

and this Court could be cited to sustain this point but the foregoing should be sufficient.

If it be held, that a District court is to blindly issue its process to enforce a request of an executive officer which creates no duty by the requestee to comply therewith, without the right of exercising its power of judicial inquiry, which is concomitant to the exercise of the judicial power, then Federal jurisdiction of this cause would be destroyed, in that the jurisdiction of the United States Courts is confined by Article III, Section 2, of the Constitution of the United States to "cases or controversies."

We submit that the only proper function of the United States District Court in these proceedings is to *adjudicate* the rights of parties litigant, and that once the Attorney General decided to avail himself of the processes of that Court, when he had no other way to secure access to the documents that the duty and power of adjudicating the rights of the parties based on *findings* as to all material issues in dispute, devolved upon that Court. In short, the only proper function of the District Court in these cases is to adjudicate, not investigate or become an adjunct to an investigative process without first exercising its powers of judicial inquiry into all material disputed issues.

In *Tutun vs. United States*, 270 U. S. 568, 576, 70 L. Ed. 738, 741, the United States Supreme Court dealt with the question of whether a naturalization proceeding constituted a "case or controversy" within the meaning of Article III, Section 2, of the Constitution. In deciding this case, the Supreme Court used the following pertinent language in stating some of the necessary elements of a "case or controversy":

"If the proceeding were not a case or controversy within the meaning of art. 3, Sec. 2, this delegation of power upon the courts would have been invalid.

* * * * * * * * * * * *

"Whether a proceeding which results in a grant is a judicial one, does not depend upon the nature of the thing granted, but upon the nature of the proceeding which Congress has provided for securing the grant. The United States may create rights in individuals against itself, and provide only an administrative remedy. United States v. Babcock, 250 U. S. 328, 331, 63 L. Ed. 1011, 1012, 39 S. Ct. Rep. 464. It may provide a legal remedy, but make resort to the course available only after all administrative remedies have been exhausted. Compare New Orleans v. Paine, 147 U. S. 261, 37 L. Ed. 162, 13 S. Ct. Rep. 303; United States v. Sing Tuck, 194 U. S. 161, 48 L. Ed. 917, 24 S. Ct. Rep. 621; American Steel Foundries v. Robertson, 262 U. S. 209, 67 L. Ed. 953, 43 S. Ct. Rep. 541. It may give to the individual the option of either an administrative or a legal remedy. Compare Clyde v. United States, 13 Wall. 38, 20 L. Ed. 479; Chorpening v. United States, 94 U. S. 397, 399, 24 L. Ed. 126, 127. Or it may provide only a legal remedy. Compare Turner v. United States, 248 U. S. 354, 62 L. Ed. 291, 39 S. Ct. Rep. 109. Whenever the law provides a remedy enforceable in the courts according to the regular course of legal procedure, and that remedy is pursued, there arises a case within the meaning of the Constitution, whether the subject of the litigation be property or status." (270 U. S. 576, 577, 70 L. Ed. 741, 742)

And, in the landmark case of *Muskrat vs. United States*, 219 U. S. 346, 356, 55 L. Ed. 246, 250, the Supreme

Court of the United States, in discussing what constitutes a "case or controversy" stated the rule as follows:

> "It therefore becomes necessary to inquire what is meant by the judicial power thus conferred by the Constitution upon this court, and, with the aid of appropriate legislation, upon the inferior courts of the United States. 'Judicial power' said Mr. Justice Miller, in his work on the Constitution, 'is the power of a court to decide and pronounce a judgment and carry it into effect between persons and parties who bring a case before it for decision'. Miller, Const. 314.
>
> * * * * * * * * * * * *
>
> "What, then does the Constitution mean in conferring this judicial power with the right to determine 'cases' and 'controversies'. A 'case' was defined by Mr. Chief Justice Marshall as early as the leading case of Marbury v. Madison, 1 Cranch. 137, 2 L. Ed. 60, to be a suit instituted according to the regular course of judicial procedure." (219 U. S. 356, 55 L. Ed. 250)

A holding that the District Courts do not have the power and authority to judicially inquire into all material issues and disputes presented in Sec. 305, Title III proceedings does not square with the language above quoted from the Tutun and Muskrat cases, supra, which defines the judicial power of the courts of the United States, and also defines what constitutes a "case or controversy".

Unless the "nature of the proceeding which Congress has provided for securing the grant" (Tutun v. United States, supra, 270 U. S. 576, 70 L. Ed. 741) includes and encompasses the duty and power of the courts of the United States to exercise their power of judicial inquiry into every material issue in dispute, then the proceeding

is outside the scope of the judicial power of the courts of the United States as defined and delimited by Article III, Section 2 of the Constitution and the cases interpreting that Section. If the courts of the United States must blindly issue its process in aid of an administrative proceeding, then the nature of the proceeding is not judicial, but is administrative, and, it is elementral that courts of the United States cannot be constitutionally delegated any administrative powers or functions. See *Tutun v. United States*, supra; *Federal Radio Commission v. General Electric Co.*, 281 U. S. 464, 74 L. Ed. 969; *Porter v. Investors Syndicate*, 286 U. S. 461, 76 L. Ed. 1226; and *Crowell v. Benson*, 285 U. S. 22, 76 L. Ed. 598.

What is "a remedy enforceable in the courts according to the regular course of legal procedure"? (Tutun v. United States, supra, 270 U. S. 577, 70 L. Ed. 741). It is more certainly *not* a case such as the one at hand, in which after issue has been joined by way of responsive pleading on a material point, the moving party, who has the burden of making out a case, declines, after being afforded an opportunity, to put on any evidence or proof as to the controverted issue, and then is granted relief. Unless a suit is brought and prosecuted in the regular course of legal procedure, there is no case within the meaning of the Constitution, and thus, no Federal jurisdiction.

The mere fact that there are adverse parties to the action is not enough to constitute a "case or controversy" unless the other essential elements of a "case or controversy" as above discussed, are also present.

In defining what constitutes due process of law under this Amendment, we have found no more succinct summary than that of Justice Frankfurter, in his concurring

opinion in *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123, 161-172, 175, 95 L. Ed. 817, 848-854, 855, 71 S. Ct. 624. Because of the clarity, brevity and thoroughness of this resume', we quote at length therefrom:

"Fairness of procedure is 'due process in the primary sense.' Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U. S. 673, 681, 50 S. Ct. 451, 454, 74 L. Ed. 1107. It is ingrained in our national traditions and is designed to maintain them. In a variety of situations the Court has enforced this requirement by checking attempts of executives, legislatures, and lower courts to disregard the deep-rooted demands of fair play enshrined in the Constitution. '(T)his court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution. One of these principles is that no person shall be deprived of his liberty without opportunity, at some time, to be heard . . .' The Japanese Immigrant Case (Yamataya v. Fisher), 189 U. S. 86, 100-101, 23 S. Ct. 611, 614, 47 L. Ed. 721. "(B)y "due process" is meant one which, following the forms of law, is appropriate to the case, and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and wherever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought.' Hagar v. Reclamation District, No. 108, 111 U. S. 701, 708, 4 S. Ct. 663, 667, 28 L. Ed. 569: 'Before its property

can be taken under the edict of an administrative officer, the appellant is entitled to a fair hearing upon the fundamental facts.' Southern R. Co. v. Commonwealth of Virginia ex rel. Shirley, 290 U. S. 190, 199, 54 S. Ct. 148, 151, 78 L. Ed. 260. 'Whether acting through its judiciary or through its Legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it.' Brinkerhoff-Faris Trust & Savings Co. v. Hill, supra, 281 U. S. at page 682, 50 S. Ct. at page 454.

"The requirements of 'due process' is not a fair-weather or timid assurance. It must be respected in periods of calm and in times of trouble; it protects aliens as well as citizens. But 'due process,' unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. Expressing as it does in its ultimate analysis respect enforced by law for that feeling of just treatment which has been evolved through centuries of Anglo-American constitutional history and civilization, 'due process' cannot be imprisoned within the treacherous limits of any formula. Representing a profound attitude of fairness between man and man, and more particularly between the individual and government, 'due process' is compounded of history, reason, the past course of decisions, and stout confidence in the strength of the democratic faith which we profess. Due process is not a mechanical instrument. It is not a yardstick. It is a process. It is a delicate process of adjustment inescapably involving the exercise of judgment by those whom the Constitution entrusted with the unfolding of the process.

"Fully aware of the enormous powers thus given to the judiciary and especially to its Supreme Court, those who founded this Nation put their trust in a judiciary truly independent-in judges not subject to the fears or allurements of a limited tenure and, by the very nature of their function detached from passing and partisan influences.

"It may fairly be said that, barring only occasional and temporary lapses, this Court has not sought unduly to confine those who have the responsibility of governing by giving the great concept of due process doctrinaire scope. The Court has responded to the infinite variety and perplexity of the tasks of government by recognizing that what is unfair in one situation may be fair in another. Compare, for instance, Den ex dem. Murray v. Hoboken Land & Improvement Co., 18 How. 272, 15 L. Ed. 372, with Ng Fung Ho v. White, 259 U. S. 276, 42 S. Ct. 492, 66 L. Ed. 938, and see Federal Communications Comm. v. WJR, 337 U. S. 265, 275, 69 S. Ct. 1097, 1103, 93 L. Ed. 1353. Whether the ex parte procedure to which the petitioners were subjected duly observed 'the rudiments of fair play,' Chicago, M. & St. P. R. Co. v. Polt, 232 U. S. 165, 168, 34 S. Ct. 301, 58 L. Ed. 554, cannot, therefore, be tested by more generalities or sentiments abstractly appealing. The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed, the protection implicit in the office of the functionary whose conduct is challenged, the balance of hurt complained of and good accomplished — these are some of the considerations that must enter into the judicial judgment.

"Applying them to the immediate situation, we note that publicly designating an organization as within the prescribed categories of the Loyalty Order does not directly deprive anyone of liberty or property. Weight must also be given to the fact that such designation is not made by a minor official but by the highest law officer of the Government. Again, it is fair to emphasize that the individual's interest is here to be weighed against a claim of the greatest of all public interests, that of national security. In striking the balance the relevant considerations must be fairly, which means cooly, weighed with due regard to the fact that this Court is not exercising a primary judgment but is sitting in judgment upon those who also have taken the oath to observe the Constitution and who have the responsibility for carrying on government.

"But the significance we attach to general principles may turn the scale when competing claims appeal for supremacy. Achievements of our civilization as precious as they were hard won were summarized by Mr. Justice Brandeis when he wrote that 'in the development of our liberty insistence upon procedural regularity has been a large factor.' Burdeau v. McDowell, 256 U. S. 465, 477, 41 S. Ct. 574, 576, 65 L. Ed. 1048 (dissenting). It is noteworthy 'that procedural safeguards constitute the major portion of our Bill of Rights. And so, no one now doubts that in the criminal law a 'person's right to reasonably notice of a charge against him, and an opportunity to be heard in his defense — a right to his day in court — are basic in our system of jurisprudence.' In re Oliver, 333 U. S. 257, 273, 68 S. Ct. 499, 507, 92 L. Ed. 682. 'The hearing, moreover, must be a real one, not a

sham or a pretense.' Palko v. State of Connecticut, 302 U. S. 319, 327, 58 S. Ct. 149, 153, 82 L. Ed. 288. Nor is there doubt that notice and hearing are prerequisite to due process in civil proceedings, e. g., Coe v. Armour Fertilizer Works, 237 U. S. 413, 35 S. Ct. 625, 59 L. Ed. 1027. Only the narrowest exceptions, justified by history become part of the habits of our people or by obvious necessity, are tolerated. Ownbey v. Morgan, 256 U. S. 94; 41 S. Ct. 433, 65 L. Ed. 837; Endicott-Johnson Corp. v. Encyclopedia Press, 266 U. S. 285, 45 S. Ct. 61, 69 L. Ed. 288; see Cooke v. United States, 267 U. S. 517, 536, 45 S. Ct. 390, 394, 69 L. Ed. 767.

"It is against this background of guidance considerations that we must view the rather novel aspects of the situation at hand. It is not true that the evils against which the Loyalty Order was directed are wholly devoid of analogy in our own history. The circumstances attending the Napoleonic conflicts, which gave rise to the Sedition Act of 1798, 1 Stat. 596, readily came to mind. But it is true that the executive action now under scrutiny is of a sort not heretofore challenged in this Court. That of itself does not justify the ex parte summary designation procedure. It does make it necessary to consider its validity when judged by our whole experience with the Due Process Clause.

"The construction placed by this Court upon legislation conferring administrative powers shows consistent respect for a requirement of fair procedure before men are denied or deprived of rights. From a great mass of cases, running the full gamut of control over property and liberty, there emerges the principle that statutes should be interpreted, if ex-

plicit language does not preclude, so as to observe due process in its basic meaning. See, e. g., Anniston Mfg. Co. v. Davis, 301 U. S. 337, 57 S. Ct. 816, 81 L. Ed. 1143; American Power & Light Co. v. Securities and Exchange Commission, 329 U. S. 90, 107-108, 67 S. Ct. 133, 1943, 91 L. Ed. 103; Wong Yang Sung v. McGrath, 339 U. S. 33, 49, 70 S. Ct. 445, 453, 94 L. Ed. 616. Fair hearings have been held essential for rate determinations and, generally, to deprive persons of property. An opportunity to be heard is constitutionally necessary to deport persons even though they make no claim of citizenship, and is accorded to aliens seeking entry in the absence of specific directions to the contrary. Even in the distribution by the Government of benefits that may be withheld, the opportunity of a hearing is deemed important.

"The high social and moral values inherent in the procedural safeguard of a fair hearing are attested by the narrowness and rarity of the instances when we have sustained executive action even though it did not observe the customary standards of procedural fairness. It is in these instances that constitutional compulsion regarding fair procedure was directly in issue. Thus it has been held that the Constitution cannot be invoked to prevent Congress from authorizing disbursements on the ex parte determination of an administrative officer that prescribed conditions are met. United States v. Babcock, 250 U. S. 328, 39 S. Ct. 464, 63 L. Ed. 1011; cf. United States ex rel. Dunlap v. Black, 128 U. S. 40, 9 S. Ct. 12, 32 L. Ed. 354. The importation of goods is a privilege which, if Congress clearly so directs, may likewise be conditioned on ex parte findings. Buttfield v. Stranahan, 192 U. S. 470, 24 S. Ct. 349, 48 L. Ed. 525; cf. Hilton v.

Merritt, 110 U. S. 97, 3 S. Ct. 548, 28 L. Ed. 83. Only by a close division of the Court was it held that at a time of national emergency, when war has not been closed by formal peace, the Attorney General is not required to give a hearing before denying hospitality to an alien deemed dangerous to public security. Ludecke v. Watkins, 335 U. S. 160, 68 S. Ct. 1429, 92 L. Ed. 881; United States ex rel. Knauff v. Shaughnessy, 338 U. S. 537, 70 S. Ct. 309, 94 L. Ed. 317. Again, when decisions of administrative officers in execution of legislation turn exclusively on considerations similar to those on which the legislative body could itself have acted summarily, notice and hearing may not be commanded by the Constitution. Bi-Metallic Inv. Co. v. State Board of Equalization of Colorado, 239 U. S. 441, 36 S. Ct. 141, 60 L. Ed. 372. Finally, summary administrative procedure may be sanctioned by history or obvious necessity. But these are so rare as to be isolated instances. Den ex dem. Murray v. Hoboken Land & Improvement Co., 18 How. 272, 15 L. Ed. 372; Springer v. United States, 102 U. S. 586, 26 L. Ed. 253; Lawton v. Steele, 152 U. S. 133, 14 S. Ct. 499, 38 L. Ed. 385.

"This Court is not alone in recognizing that the right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principal basic to our society. Regard for this principle has guided Congress and the Executive. Congress has often entrusted, as it may, protection of interests which it has created to administrative agencies rather than to the courts. But rarely has it authorized such agencies to act without those essential safeguards for fair judgment which in the

course of centuries have come to be associated with due process. See Switchmen's Union of North America v. National Mediation Board, 320 U. S. 297, 64 S. Ct. 95, 88 L. Ed. 61; Tutun v. United States, 270 U. S. 568, 576, 577, 46 S. Ct. 425, 426, 70 L. Ed. 738; Pennsylvania R. Co. v. United States Railroad Labor Board, 261 U. S. 72, 43 S. Ct. 278, 67 L. Ed. 536. *And when Congress has given an administrative agency discretion to determine its own procedure, the agency has rarely chosen to dispose of the rights of individuals without a hearing, however informal.*

"The heart of the matter is that democracy implies respect for the elementary rights of men, however suspect or unworthy; a democratic government must therefore practice fairness; and *fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights.*

"An opportunity to be heard may not seem vital when an issue relates only to technical questions susceptible of demonstrable proof on which evidence is not likely to be overlooked and argument on the meaning and worth of conflicting and cloudy data not apt to be helpful. But in other situations an admonition of Mr. Justice Holmes becomes relevant. 'One has to remember that when one's interest is keenly excited evidence gathers from all sides around the magnetic point * * *.' It should be particularly heeded at times of agitation and anxiety, when fear and suspicion impregnate the air we breathe. Compare Brown, The French Revolution in English History. '*The plea that evidence of guilt must be secret is abhorrent to free men, because it provides a cloak for the malevolent, the misinformed, the meddlesome, and the corrupt to play the role of informer undetected and uncorrected.*'

United States ex rel. Knauff v. Shaughnessy, 338 *U. S.* 537, 551, 70 *S. Ct.* 309, 317, 94 *L. Ed.* 317 (*dissenting*). *Appearances in the dark are apt to look different in the light of day.* (Emphasis added).

"Man being what he is cannot safely be trusted with complete immunity from outward responsibility in depriving others of their rights. At least such is the conviction underlying our Bill of Rights. That a conclusion satisfies one's private conscience does not attest its reliability. The validity and moral authority of a conclusion largely depend on the mode by which it was reached. Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. *No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it.* Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done.

* * *

". . . The Attorney General is certainly not immune from the historic requirements of fairness merely because he acts, however, conscientiously, in the name of security. Nor does he obtain immunity on the ground that designation is not an 'adjudication' or a 'regulation' in the conventional use of those terms. Due process is not confined in its scope to the particular forms in which rights have heretofore been found to have been curtailed for want of procedural fairness. Due process is perhaps the most majestic concept in our whole constitutional system. While it contains the garnered wisdom of the past in assuring fundamental justice, it is also a living principle not confined

to past instances." 71 S. Ct. 643-650. (Emphasis added).

C. WOULD LEWIS' SIXTH AMENDMENT RIGHTS AND HER FIFTH AMENDMENT RIGHTS TO DUE PROCESS OF LAW, AND HER RIGHTS AS A DEFENDANT IN THE CASE AT BAR, OR EITHER, BE DENIED TO HER IF THE REASONS ALLEGED BY RESPONDENT AS ENTITLING HIM TO THE JUDGMENT ORDER OF THE DISTRICT COURT CONSTITUTES A NON-LITIGABLE AND NON-REVIEWABLE AND ADJUDICATION OR DETERMINATION.

To pose the above question is to answer it — yes! Sufficient citation of authority is found in *Hannah vs. Larche*, 363 U. S. 420, 494, 4. L. Ed. 2d 1307, 1357.

Congress cannot legislate one guilty of a crime or require a court to do so in an ex parte proceeding or where the *person* is denied the right of confrontation, the right of cross-examination, and has not had her day in court; and has not been permitted to make any defense, legal or factual, to the charges against her.

If the conclusionary allegations of the complaint, alleging the reasons why respondent said he is entitled to the automatic judgment order of the District Court are not litigable and not subject to Judicial determination or review or disproof such would constitute a finding of guilt of violating the Federal Criminal Statute Title 18, USC, Section 242 (printed in the Appendix as A5).

See: *McFarland vs. American Sugar Refining Co.*, 241 U. S. 79, 86, 60 L. Ed. 899, 904.

D. KENNEDY VS. LYND AND KENNEDY VS. OWEN HAVE NO JUDICIAL VALIDITY IN THE CASE AT BAR.

As apparent from the foregoing and the opinion and order in *Lynd* (A37-40) and the order in Kennedy vs. Owen (A41), the Fifth Circuit opinions were rendered when none of the matters therein decided by the Fifth Circuit had been presented to or passed upon by the District Court.

CONCLUSION

For the foregoing reasons, we respectfully request this Court to issue the said Writ of Certiorari so that these matters may be fully presented to and acted upon by this Court.

Respectfully submitted this 21st day of March, 1964.

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CERTIFICATE OF SERVICE

I, the undersigned, Dugas Shands, an Assistant Attorney General of the State of Mississippi, one of the Attorneys of Record for Petitioner, and a member of the Bar of the Supreme Court of the United States, do hereby certify that I have this day mailed two true copies of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit with appendix thereto separately printed, postage prepaid, to Harold H. Greene, Attorney, Civil Rights Division, Department of Justice, Washington, D. C., and so mailed one true copy thereof the Honorable Archibald Cox, Solicitor General of the United States, Department of Justice, Washington, D. C.

DONE AT WASHINGTON, D. C., this the 21st day of March, 1964.

s/ DUGAS SHANDS

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MRS. WALTER LEWIS, Circuit Clerk and Registrar of Elections of Bolivar County, Mississippi ..... Petitioner

vs.

ROBERT F. KENNEDY, Attorney General of the United States ..... Respondent

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INDEX TO APPENDIX

	Page
APPENDIX 1:	A1-7
TEXT OF SOME PERTINENT FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS; FEDERAL RULES OF CIVIL PROCEDURE AND MISSISSIPPI STATUTES	
The Constitution of the United States, Amendment V	A1
Amendment VI	A1
PERTINENT FEDERAL STATUTES	A2-5
United States Code	
Title 28, Sec. 1254(1). Courts of Appeals; certiorari; appeal; certified questions	A2
Title 42, Secs. 1974, 1974 a-e incl. (Title III Civil Rights Act of 1960—Secs. 301-306, incl. H.R. 8601, 86th Cong., 2d Sess.)	A2-5
Sec. 1974. Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation	A2-3
Sec. 1974a. Theft, destruction, concealment, mutilation, or alteration of records or papers; penalties	A3
Sec. 1974b. Demand for records or papers by Attorney General or representative; statement of basis and purpose	A3
Sec. 1974c. Disclosure of records or papers	A3-4

Page

Sec. 1974d. Jurisdiction to compel production of records or papers A4

Sec. 1974e. Definitions A4

Sec. 1291. Final decisions of district courts A4

Sec. 2101. Supreme Court; time for appeal or certiorari docketing; stay A4-5

Title 18, Sec. 242. Deprivation of rights under color of law A5

PERTINENT FEDERAL RULES OF CIVIL PROCEDURE A5-6

Rule 1—Scope of Rules A5

Rule 81(a)(3):

(a). To What Proceedings Applicable A6

PERTINENT MISSISSIPPI STATUTES A6-7

Mississippi Code 1942 Annotated:

Sec. 2106. Elections—intimidating electors A6

Sec. 2111. Elections—fraud in registration of voters A6-7

Sec. 3275. Penalties on election officers A7

APPENDIX 2: In re Mrs. Walter Lewis, Circuit Clerk and Registrar of Elections of Bolivar County, Mississippi—No. D-C-1-61. Order of U.S. District Court, Northern District of Mississippi, Delta Division (Nov. 16, 1962) (Unreported) (R. 181-182), from which both parties appealed to 5 Cir. A8-10

Page

APPENDIX 3: Kennedy vs. Lewis (And reverse title) No. 20411. Per curiam opinion or order of U.S. Court of Appeals, 5 Cir., (Sept. 18, 1963) *denying* Kennedy's motions for summary reversal on his direct appeal and summary affirmance of Lewis' appeal or cross-appeal. (Unreported) A11-12

APPENDIX 3A: Kennedy vs. Lewis, 5 Cir., U.S. Court of Appeals, No. 20411. Argument and Submission (Extract from the Minutes of Nov. 15, 1963) (Unreported) A12

APPENDIX 4: Kennedy vs. Lewis (And reverse title) No. 20411. 325 F.2d 210, 5 Cir., Dec. 12/6/63; Reh. Den. 1/28/64 (R. 199-202) A13-15

APPENDIX 5: Kennedy vs. Lewis (And reverse title) No. 20411. *Judgement of U.S. Court of Appeals, 5 Cir., (Dec. 6, 1963) (R. 203) entered upon above opinion* A16-17

APPENDIX 6: Kennedy vs. Lewis (And reverse title) No. 20411. Order of U.S. Court of Appeals, 5 Cir., (Jan. 28, 1964), denying petition for re-hearing (Unreported) (R. 259). Entered upon Lewis' petition for rehearing and supporting brief, (R.204-258) A18

APPENDIX 7: Kennedy vs. Lewis (And reverse title) No. 20411. Order staying issuance of mandate (Feb. 20, 1964). (Unreported) A19-20

APPENDIX 7A: March 9, 1964—Extension of above stay, Appendix 7, to and including March 21, 1964, (Unreported) A20

Page

APPENDIX 8: Kennedy vs. Lynd, et al, 306 F. 2d 222; (Miss., 5 Cir. Dec. 7/11/62, Reh. Den. 8/8/62) Cert. denied, 371 U.S. 952, 9 L. Ed. 2d 500 (1963) A21-36

APPENDIX 9: In Re Theron C. Lynd, Registrar of Elections of Forrest County, Mississippi, Opinion of U.S. District Court, Southern District, Hattiesburg Division, No. 1604. Opinion of District Court of Jan. 15, 1962, holding this case abandoned, etc. and declining to pass upon the pleadings then existing (Unreported) A37-39

APPENDIX 10: In Re Theron C. Lynd, Same case supra in District Court. Order of said District Court of Feb. 16, 1962, upon opinion, Appendix 9, *Remanding* entire cause to files of the court. Appealed, resulting in 5 Cir. opinion, Appendix 8 (Unreported) A40

APPENDIX 11: Kennedy vs. Owen, et al, 321 F.2d 116, 5 Cir. Dec. 7/3/63. Stay denied 84 S.Ct. 12, 11 L.Ed. 2d 18, July 19, 1963 ..... A41-44

APPENDIX 12: Kennedy vs. Owen, District Court Order; June 11, 1963, (Unreported) (decision on appeal see Appendix 11, supra, A41-44) A-45

APPENDIX 1

TEXT OF PERTINENT FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS; FEDERAL RULES OF CIVIL PROCEDURE; AND MISSISSIPPI STATUTES.

The Constitution of the United States

Amendment V:

> *No person* shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; *nor shall any person* be subject for the same offense to be twice put in jeopardy of life or limb; *nor shall* be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty, or property, without due process of law;* nor shall private property be taken for public use, without just compensation. (Empasis added)

Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

PERTINENT FEDERAL STATUTES

United States Code

Title 28 U.S.C.

§1254. *Courts of Appeals; certiorari; appeal; certified questions.*

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

42 U.S.C. Secs. 1974, 1974 a-e incl. (*Title III Civil Rights Act of* 1960; Secs. 301-306 incl., H. R. 8601, 86th Congress, 2nd Session)

§ 1974. Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation.

Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain

and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§ 1974a. Theft, destruction, concealment, mutilation, or alteration of records or papers; penalties.

Any person, whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by section 1974 of this title to be retained and preserved shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§ 1974b. Demand for records or papers by Attorney General or representative; statement of basis and purpose.

Any record or paper required by section 1974 of this title to be retained and preserved shall, upon demand in writing by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying at the principal office of such custodian by the Attorney General or his representative. This demand shall contain a statement of the basis and the purpose therefor.

§ 1974c. Disclosure of records or papers.

Unless otherwise ordered by a court of the United States, neither the Attorney General nor any employee of the Department of Justice, nor any other representative of the Attorney General, shall disclose any record or paper produced pursuant to this subchapter, or any reproduction or copy, except to Congress and any com-

mittee thereof, governmental agencies, and in the presentation of any case or proceeding before any court or grand jury.

§ 1974d. Jurisdiction to compel production of records or papers.

The United States district court for the district in which a demand is made pursuant to section 1974b of this title, or in which a record or paper so demanded is located, shall have jurisdiction by appropriate process to compel the production of such record or paper.

§ 1974e. Definitions.

As used in this subchapter, the term 'officer of election' means any person who, under color of any Federal, State, Commonwealth, or local law, statute, ordinance, regulation, authority, custom, or usage, performs or is authorized to perform any function, duty, or task in connection with any application, registration, payment of poll tax, or other act requisite to voting in any general, special, or primary election at which votes are cast for candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico.

§1291: *Final decisions of district courts.*

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

§2101. *Supreme Court; time for appeal or certiorari; docketing; stay.*

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

Title 18, *U.S.C.* § 242. Deprivation of rights under color of law.

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

PERTINENT FEDERAL RULES OF CIVIL PROCEDURE

Federal Rules of Civil Procedure, Rule 1 — Scope of Rules

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action. As amended Dec. 29, 1948, eff. Oct. 20, 1949.